

In the High Court of Judicature at Madras

Dated: 29.01.2002.

Coram:

The Hon'ble Mr.Justice P.K.MISRA

Writ Petition No.6118 of 1997

and

W.M.P.Nos.10115/97 and 31494/2001

M.Avudaiappan ..Petitioner

vs.

1.The District Collector,
Tirunelveli Kattabomman
District,
Tirunelveli.

2.The Sub Collector,
Tenkasi,
Tirunelveli Kattabomman Dist.

3.The District Adi Dravidar
Welfare Officer,
Tirunelveli,
Tirunelveli Kattabomman Dist. ..Respondents

Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of Certiorari, as stated therein.

For Petitioner : Mr.V.Kannadasan

For Respondents : Mrs.N.G.Kalaiselvi,
Spl. Govt. Pleader

: O R D E R

Heard the learned counsel appearing for the petitioner and the

learned Special Government Pleader for the respondents.

2. Though the matter is listed for consideration of miscellaneous petitions, in view of the fact that the question involved in the miscellaneous petitions is same in the writ petition, on consent of the counsels appearing, the writ petition itself is taken up for disposal along with the miscellaneous petitions.

3. The petitioner entered into service prior to 1970, on merit and not on the basis of any reservation. On the basis of G.O.Ms.No.1564, Social Welfare Department, dated 30.7.1985, including OPS Vellalar Community as Backward Class, the petitioner furnished community certificate. Subsequently, the said community certificate has been cancelled. This cancellation is being challenged in the present writ petition.

4. The petitioner has contended inter alia that while cancelling the community certificate, the authority has relied upon the report made by the Sub Collector even though copy of such report had not been furnished to the petitioner. It is further submitted that the Sub Collector had also taken the statement of several persons behind the back of the petitioner without giving any notice. The petitioner has relied upon the Division Bench decision of this Court, reported in 199 6 Writ L.R.480 (D.ILLAMARAN vs. GOVERNMENT OF INDIA).

5. Though a counter has been filed, the basic fact that statements had been recorded behind the back of the petitioner and the report of the Sub Collector had not been furnished to the petitioner, have not been denied.

6. In the aforesaid Division Bench decision, it was stated as follows:-

"Whenever such question arises, as to whether a person belongs to a particular community recognised as the Scheduled Tribe or Scheduled Caste, decision has to be taken by the Collector of the District, after holding due enquiry or such case, he may himself hold an enquiry or direct the Revenue Divisional Officer to hold an enquiry and submit a report. In the event the Collector adopts the latter course, he has to make available a copy of the report submitted by the Revenue Divisional Officer to the concerned person and give him an opportunity to file his objections and adduce evidence, if any and then decide the matter after hearing the aggrieved person, in the instant case the petitioner. This we have been reiterating in several cases and in spite of that the Collectors are committing the same mistakes. In view of the fact that no opportunity whatsoever has been given to the petitioner to prove his case, it is necessary to issue an appropriate direction to the Collector as well as to respondents 1 and 2.

7. In view of the aforesaid decision, the cancellation of the community certificate cannot be held to be legal and the matter has to be reconsidered by the appropriate authority by giving adequate opportunity of

haring to the petitioner after furnishing the copy of the report of the Sub Collector. It is made clear that if any statement made by any person is to be relied upon, opportunity should be given to the petitioner to cross examine such person.

8. The learned counsel appearing for the petitioner stated that the petitioner has retired from service in the mean time, but, the retirement benefits have not been given to the petitioner because of the cancellation of the community certificate. It has been further stated that even though the petitioner had been employed on the basis of selection as a general candidate and subsequently, he had furnished community certificate, but, on the basis of the said community certificate, no particular benefit has been conferred on the petitioner. It is submitted that since the petitioner had worked and retired in the meantime, his retiral benefits should not be withheld on account of the cancellation of the community certificate.

9. It is obvious that the question of cancellation of community certificate is required to be re-determined for the purpose of benefit of his children and not for the benefit of the petitioner in service. There is no dispute that no particular benefit had been availed by the petitioner in his service career on the basis of so called community certificate and therefore, it would not be appropriate to withhold the pensionary benefits. Moreover, the petitioner has already worked and retired and therefore, even assuming that the community certificate was not correct, that would not be a ground to deny the retiral benefits to the petitioner at this point of time.

P.K.

MISRA,J.

ATR

Therefore, it is made clear that the question of grant of retiral benefits to the petitioner is not dependent upon the enquiry now to be conducted for the purpose of consideration of the community certificate.

10. Subject to the aforesaid clarification, the writ petition is disposed of. Consequently, W.M.P.Nos.10115/97 and 31494/2001 are closed. There will no orders as to costs.

29.01.2002.

Index: Yes

ATR

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Assistant Registrar

/true copy/

Sub Assistant

Registrar

To,

1.The District Collector,
Tirunelveli Kattabomman
District,
Tirunelveli.

2.The Sub Collector,
Tenkasi,
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3.The District Adi Dravidar
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W.P.No.6118 of 1997 □